

IBLA 77-467

Decided December 19, 1977

Appeal from decision of the Nevada State Office, Bureau of Land Management, denying reinstatement of geothermal resource leases N-8291 and N-10139.

Affirmed.

1. Geothermal Leases: Reinstatement -- Geothermal Leases: Termination

A geothermal resource lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if it is shown that the failure to pay the lease rental timely was justifiable or not due to a lack of reasonable diligence.

2. Geothermal Leases: Reinstatement -- Geothermal Leases: Termination -- Oil and Gas Leases: Reinstatement -- Oil and Gas Leases: Termination

The standards of reasonable diligence and justifiable delay govern reinstatement of oil and gas leases as well as geothermal leases, and principles established in oil and gas lease reinstatement cases generally govern cases involving reinstatement of geothermal leases as well.

3. Geothermal Leases: Reinstatement -- Geothermal Leases: Termination

The submission of an unsigned check the day before the anniversary date of a geothermal resource lease does not constitute timely

payment of rental and such a lease terminates by operation of law. The fact that a signed check was not sent until after the anniversary date precludes a finding of reasonable diligence, and because the failure to sign the original check was the result of inadvertence or employee error, it is a matter within the control of the lessee and therefore does not constitute justification for late payment.

APPEARANCES: Page T. Jenkins, pro se.

#### OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Page T. Jenkins has appealed from the June 22, 1977, decision of the Nevada State Office, Bureau of Land Management, denying reinstatement of geothermal resource leases N-8291 and N-10139, which were held to terminate by operation of law for failure to pay the annual rental on or before the anniversary date. The anniversary date for the leases was June 1. On May 31, the State Office received an unsigned check for the annual rental, but a signed check was not received until June 13.

[1, 2] The Geothermal Leasing Act at 30 U.S.C. § 1004 (1970) provides that a geothermal lease automatically terminates by operation of law if the lessee fails to pay the annual rental on or before the anniversary date, and a terminated lease may only be reinstated if it is shown that the failure to pay the lease rental timely was justifiable or not due to a lack of reasonable diligence. Implemented, 43 CFR 3244.2. Reasonable diligence normally requires sending or delivering payment sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of payment. 43 CFR 3244.2-2(b)(2). The requirement of reasonable diligence or justifiable delay governs reinstatement of oil and gas leases as well as geothermal leases. Compare 30 U.S.C. § 188(c) (1970) with 30 U.S.C. § 1004(c) (1970); and 43 CFR 3108.2-1 with 43 CFR 3244.2-2(b). The geothermal regulations were generally patterned after the oil and gas regulations existing then. Therefore, principles established in oil and gas lease reinstatement cases interpreting similar regulatory provisions govern cases involving reinstatement of geothermal leases as well. Cf. California Geothermal, Inc., 19 IBLA 268 (1975); E & H Investments, Inc., 19 IBLA 141 (1975); Hydrothermal Energy and Minerals, Inc., 18 IBLA 393, 82 I.D. 60 (1975).

[3] Appellant's submission of an unsigned check the day before the anniversary date of the lease did not constitute timely payment of the rental, as it was not negotiable. Therefore, the lease terminated by operation of law. Richard V. Bowman, 19 IBLA 261 (1975).

The fact that a signed check was not mailed until after the anniversary date precludes a finding of reasonable diligence. Id. Appellant's failure to sign the check and make timely payment was admittedly the result of inadvertence, and because that is a matter which was within the control of the lessee, it does not constitute justification for the late payment of rental. Id. Also, the fact Appellant's employee may have been responsible for the error is not a justifiable excuse. David R. Smith, 33 IBLA 63 (1977).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson  
Administrative Judge

We concur:

Edward W. Stuebing  
Administrative Judge

Martin Ritvo  
Administrative Judge

